SUPREME COURT OF THE UNITED STATES.

No. ~~304~~. 228 109.

THE UNITED STATES, APP'TS,

vs.

MANUEL LARIOS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 304.

THE UNITED STATES, APP'TS,

vs.

MANUEL LARIOS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

"Lands near the Mission of San Juan Bautista."

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MANUEL LARIOS, claimant,
vs.
THE UNITED STATES, defendant.
} For the place named "Lands near the mission of San Juan Bautista."

2

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this fifteenth day of August, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private lands claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Manuel Larios, for land near the mission San Juan Bautista, was presented, and ordered to be filed and docketed with No. 297, and is as follows, to wit.

(*Vide* page 5 of this transcript.)

Upon which petition the following subsequent proceedings were had, in their chronological order, to wit:

SAN FRANCISCO, *February* 26, 1853.

In case No. 297, Manuel Larios, for the place named "San Juan Bautista," the deposition of Manuel Castro, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with documents marked H. H. Nos. ——, annexed thereto, was filed.

(*Vide* page 7 of this transcript.)

In the same case the deposition of José Castro, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(*Vide* page 9 of this transcript.)

4 SAN FRANCISCO, *October* 11, 1853.

Case No. 297 was submitted on briefs and taken under advisement.

SAN FRANCISCO, *February* 7, 1854.

In the same case the counsel for the claimant filed the following motion and affidavits, to wit.

(*Vide* page 30 of this transcript.)

Which motion was taken under advisement by the board.

In the same case the depositions of Claudio Vasquez and Ramon Auzar, witnesses in behalf of the claimant, taken before Commissioner R. Aug. Thompson, were filed.

(*Vide* pages 11 and 13 of this transcript.)

SAN FRANCISCO, *March* 21*st*, 1854.

In the same case Commissioner Alpheus Felch delivered the opinion of the board upon the motion of the counsel for the claimant, heretofore, to wit, on the 7th February last, filed, asking leave to file the depositions of Ramon Auzar and Claudio Vasquez as evidence in this case, overruling the said motion and denying the prayer of the petitioners.

SAN FRANCISCO, *April* 4, 1854.

In the same case the counsel for the claimant moved the board to reinstate the case on the docket for further evidence and rehearing, and filed the following affidavit, to wit.

(*Vide* page 32 of this transcript.)

5 SAN FRANCISCO, *April* 18, 1854.

In the same case Commissioner Alpheus Felch delivered the decision of the board upon the motion of the counsel for the claimant, filed heretofore, to wit, on the 4th April inst., granting the same.

Ordered that the case be reinstated on the trial docket, and be placed at the foot of the calendar of the 1st class.

SAN FRANCISCO, *April* 25, 1854.

In the same case the counsel for the claimants filed the following stipulation, to wit.

(*Vide* page 33 of this transcript.)

SAN FRANCISCO, *July* 14, 1854.

In the same case the deposition of José Ma. Covarrubias, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed.

(*Vide* page 15 of this transcript.)

SAN FRANCISCO, *July* 17, 1854.

In the same case the deposition of José Ma. Aguilar, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed.

(*Vide* page 17 of this transcript.)

SAN FRANCISCO, *July* 21, 1854.

Case No. 297 was argued and submitted.

In the same case the deposition of Man'l Castro, a witness in behalf of the claimants, taken before the commissioners sitting as a board, was filed.

6 (*Vide* page 20 of this transcript.)

In the same case the counsel for the claimant filed the following stipulation, to wit.

(*Vide* page 33 of this transcript.)

SAN FRANCISCO, *August* 25, 1854.

In the same case the counsel for the claimant filed the following stipulation, to wit.

(*Vide* page 34 of this transcript.)

SAN FRANCISCO, *June* 19, 1855.

In the same case Commissioner R. Aug. Thompson delivered the opinion of the board, confirming the claim.

(*Vide* page 53 of this transcript.)

And the following order was made, to wit.

(*Vide* page 64 of this transcript.)

7 *Petition.*

Before the honorable the commissioners to ascertain and settle private land claims in California.

The petition of Manuel Larios respectfully shows, that he claims, by virtue of a right and title derived from the Mexican government, a tract of land in said State, being near the mission of San Juan Bautista, and supposed to contain the quantity of about one square league, according to the boundaries expressed in the grant thereof.

Said land was granted to the claimant on the 4th day of May, in the year 1839, by Don José Castro, prefect of the first district of the department of California, pursuant to an order of that effect given by Don Juan B. Alvarado, constitutional governor of said department, and pursuant to the laws and usages and customs of the said government, and has ever since been occupied and held in quiet possession by the claimant.

A copy of said grant and a translation of the same are herewith presented and prayed to be taken as part of this petition, and the original will be produced and proved as may be required.

Said land has not been surveyed. There is no interfering claim to said land, or any portion thereof, known to this claimant.

By his attorney,

JONES, TOMPKINS & STRODE.

Filed in office Aug't 5, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Record of Petitioner, vol. 1, pages 192 and 193.

GEO. FISHER, *Sec'y.*

8 *Deposition of Man'l Castro.*

SAN FRANCISCO, *Feb'y* 26, 1853.

On this day, before Com. Hiland Hall, came Manuel Castro, a witness on behalf of the claimant, Manuel Larios, petition No. 297, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent present.

In answer to inquiries by counsel for the claimant, the witness testified as follows:

My name is Manuel Castro; my age is thirty-one years; and I reside at San Tomas, in Lower California, and am an officer in the Mexican army. In 1845 I resided in Monterey, and was appointed prefect of the second district of California, which then embraced the town of San Juan Bautista or San Juan del Castro.

The archives of the prefect of the first district, while San Juan Bautista was within that district, were sent to Monterey, and Ramon Estrada took charge of them. This was at the end of 1842. Said Estrada was prefect at Monterey, and when he ceased to be such by order of Governor Micheltorena, the archives went into the office of the alcalde at Monterey, who acting as judge of the first instance. This had happened before I was appointed prefect. I took a portion of them, such as were wanted, and had them in my office as prefect, where they remained until the breaking out of the war with the United States. About that time I left this part of the country and moved to Mexico, leaving the archives with my effects in my own house in Monterey, and during my absence some portion of
9 them were taken away by the parties interested. On my return, finding that they had been disturbed, I took a portion of them and delivered them to W. E. P. Hartnell, and a portion of them remained in my possession, and are still in my possession.

Mr. Hartnell was at the time employed in the office where the public archives were kept, with Mr. Halleck as I understood, and I thought him a proper person to be entrusted with the papers. I do not recollect that there is among the papers which I now have any order from the governor to the prefect of the first district to grant lands in San Juan Bautista, but there may be such an order among them.

While I was prefect I made some grants of land in small tracts, being authorized to make them by authority of the law of March, 1837. They were made for settlement and agricultural purposes, and was of the common lands of the town; they also made grants of house lots in towns. This was the custom of other prefects, my predecessors in office.

Questions by associate law agent.

Question. Did you make the grants which you speak without instructions in each case from the governor?

Answer. They were made without special instruction from the governor, and in value of the authority of the law. In some cases they were made on the recommendation of the governor.

What was the extent of the largest tract you ever granted?
10 Answer. I cannot positively recollect, but I believe I never granted any tract exceeding eight hundred varas on each side.

Question. Do you know that any common lands were ever granted by the government to the town of San Juan Bautista?

Answer. I do not know of any particular act or resolution granting such lands. The prefects always knew how far the common lands extended, and they made grants within their demarcation.

MAN'L CASTRO.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Feb'y 26th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 2, p. 611.

GEO. FISHER, *Sec'y.*

11 *Deposition of José Castro.*

SAN FRANCISCO, *Feb.* 26, 1853.

On this day, before Com'r Hiland Hall, came José Castro, a witness in behalf of the claimant, Manuel Larios, petition No. 297, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimant, the witness testified as follows:

My name is José Castro; my age is forty-four years; and I reside at Monterey.

In the month of May, 1839, I held the office of prefect of the first district of California. A paper is now shown me, purporting to be a grant of ownership or possession to Manuel Larios, dated May 4, 1834, and which is hereto attached and marked H. H. No. 1. The paper was signed by me as prefect, and at the time it was dated.

José Ma Covarrubias was secretary of the prefect at the time, and his signature to said papers is genuine.

I had an order from the governor to perform the act stated in said paper, which order was left by me among the archives of the prefect when I ceased to hold the office. Where it is now I do not know, nor do I know what has now become of the archives. I delivered them to my successor in the latter part of the year 1839 or the beginning of 1840.

It was customary for the prefect to make grants of less than one square league of land and was authorized by the constitution of Mexico of 1836, with the consent and advice of the governor.

12 San Juan Bautista and San Juan del Castro are one and the same place.

Said Larios occupied the land from the time it was granted him, with a house in which he lived, cultivated the ground, and had an orchard of fruit trees, and kept horses on it, and he has continued his occupancy to the present time.

I think the quantity of the land is about three quarters of a league. It was the policy of the government at that time to form a settlement at San Juan Bautista to serve as a protection against the Indians, and to unite all the ranchos in a body, and for that reason the prefect was authorized to make grants.

Questions by the associate law agent.

Question. Did you receive any special order from the governor to make the particular grant, or was it made in virtue of a general order from the governor, or was it in virtue of your general powers as prefect under the constitution?

Answer. It was by special order from the government in this particular case, which order was filed in the prefect's office, as I have before stated. And it was also made by virtue of the powers conferred on the prefect by the constitution, and in pursuance of a valid understanding which I had with the governor in relation to such grant.

Had any lands been assigned to the town of San Juan as tierras communes, or common lands, at the time of your making
13 this grant?

Answer. One league of land had been reserved as common land for the first settlers of that place, to be divided among them. I mean one league in each direction, making four square leagues of land. The land granted as above was embraced in the four square leagues.

Whose handwriting is the body of the before-mentioned grant?

Answer. It is in my handwriting.

JOSE CASTRO.

Filed in office Feb. 26, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 2, p. 612.

GEO. FISHER, *Sec'y.*

14 *Deposition of C. Vasquez.*

UNITED STATES LAND COMMISSION,
San Francisco, Feb. 2, 1854.

On this day, before Com'r R. Aug. Thompson, came Claudio Vasquez, a witness on behalf of claimant, Manuel Larios, case No. 297, who after being duly sworn deposes as follows, his evidence being interpreted by the secretary:

Present: Claimant's attorney and U. S. asso'te law agent.

Witness states his name is Claudio Vasquez, his age twenty-eight years, and residence Monterey county and at San Juan Bautista, where I was raised.

Question by claimant's attorney. Were you in 1838 acquainted with any tract of land near Juan Bautista, lying between the "Camino Real de la Medio," so called, the "Lomas que Muann la Poblacion," the lands of Señor Gomez, José de los Santos Abila, and the lands of Don Juan Ausa; and if so, by what name has said land been called? Who has occupied it and been recognized as its owner by the colindantes, the citizens of San Juan, and the public authorities? And has there ever been, previous to the American war, any reclamation, question, or dispute against said rights of occupancy or ownership?

Answer. I know said tract of land; it was called San Antonio. It has been occupied by Don Manuel Larios, who has been uniformly recognized by the persons referred to in the question as its
15 owner. I have known it ever since I can remember, and during all that time it has been so recognized, I have never before been heard or known of any question or dispute as to his said right of occupancy or ownership.

his
CLAUDIO + VASQUEZ.
mark.

Sworn to and subscribed before me Feb. 2, 1850.
R. AUG. THOMPSON, *Com'r.*

Filed in office Feb'y 7th, 1854.
GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 3, p. 684.

Deposition of Ramon Auzar.

UNITED STATES LAND COMMISSION,
San Francisco, Feb. 2, 1852.

On this day, before Commissioner R. Aug. Thompson, came Ramon Auzar, a witness in behalf of claimant, Manuel Larios, case 297, who, after being duly sworn, deposes as follows, his evidence being interpreted by the secretary:

Question. What is your name, age, and place of residence, and place of your birth?

Answer. My name is Ramon Auzar; my age, thirty-three or thirty-four; and I reside at San Juan Bautista, in Monterey county, and have lived there ever since the year 1835.

Question 2. Were you in May, 1839, acquainted with any
16 tract of land near San Juan Bautista, lying between the "Camino Real de en Medio," so called, the Loma que Munn a la Pablacion, the lands of Señor Gomez, of José de los Santos Abila, and the lands of Juan Auzar; and if yea, by what name has the said tract of land been called? Who has occupied it since that time, and in what manner?

Answer. I have known said tract of land ever since I lived there. It was first known as the rancho of Don Manuel Larios, but in 1839 and after, it was known as San Antonio. When I first knew it it was occupied by Manuel Larios, who lived on it, and had stocks of cattle, horses and sheep, corrals, and a portion of the land enclosed and in cultivation. He has continued to live on the land ever since. His occupation has been continued and uninterrupted ever since I first knew it in 1835.

Question by same. Look at the document now shown you, marked H. H. No. 1, annexed to the deposition of José Castro, filed in this case, and state if the land therein described is the same of which you have spoken in your preceding answer, and if you know the boundaries of it, and could point them out on the land.

Answer. It is the same land. I am acquainted with the boundaries, and could point them out on the land. I have known the boundaries since 1840. They were shown me by the owner. I own three small lots adjoining it. The middle road from Mon-
17 terey to San Juan Bautista, in front of the Poblacion, is the boundary on one side to the top of the hill, looking toward the Pablacion. From that point the cone or summit of the ridge is the boundary dividing it from the lands of Joaquin Gomez to the line of José de los Santos Abila, thence with Abila's line until it intersects the line of Don Juan Auzar, then with said last-mentioned line to a ditch near a small house; from thence the said ditch, which borders the public road to Santa Cruz, is the boundary until it intersects the boundary of the lands of the mission of San Juan Bautista; thence with the line of said mission to the middle road first mentioned.

Question by same. Who has been recognized as the owner of said tract of land since the time that you first knew it, by the colindantes and the citizens of San Juan, including the public authorities? And had there ever, previous to the American war, to your knowledge, been any reclamation, question, or dispute against the said right of occupancy or ownership?

Answer. Manuel Larios has been uniformly recognized as the owner of the said rancho by the colindantes, citizens, and public authorities. And, so far as I know, there never was, previous to the said war, any question or dispute as to his right of occupancy or ownership. I am a colindante of said rancho, and have always lived in San Juan since the year 1835.

Question by associate law agent. Do you know any instance in which the rights of Manuel Larios to said lands have been
18 recognized by the public authorities.

Answer. I do not know that his rights were even disputed.

RAMON AUZAR.

Present: Claimant's attorney and U. S. associate law agent.

Sworn to and subscribed before me, Feb'y 2, 1854.

R. AUG. THOMPSON, *Com'r.*

Filed in office Feb'y 7th, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 3, p. 685.

GEO. FISHER, *Sec'y.*

19 *Deposition of José Maria Covarrubias.*

In the U. S. land commission for California, claim 297.
Manuel Larios, for land near San Juan Bautista.

SAN FRANCISCO, *July* 14, 1854.

On this day, before Com'r Peter Lott, commissioner for taking testimony, personally appeared José Maria Covarrubias, a witness produced on the part of the claimant in this case, who, being duly sworn, deposeth as follows:

Question. What is your name, age, and place of residence?

Answer. My name is José Maria Covarrubias; my age is forty-six years; my residence is in Santa Barbara, in this State.

Please look at the document filed in this case, marked H. H. No. 1, annexed to the deposition of José Castro, and state whether the name of "José Ma. Covarrubias," appearing at the bottom of said document, is your genuine signature, and when, where, and under what circumstances the said document was executed.

Answer. The name "Jose Maria Covarrubias," appearing at the bottom of the said document referred to in the preceding question, is my genuine signature. I have looked at the document. The said document was executed at the time of its date, in San Juan Bautista. I signed it as secretary of the prefecturate of the first district, which office I then held. The prefect had special power from the
20 governor to grant lands in the district of San Juan Bautista.

Questions by U. S. law agent.

Question 1st. What is the date of the document referred to in your preceding answer?

Answer. The said document is dated in the month of May, 1839, but I do not recollect precisely the day without referring to it again.

Question 2d. Where did José Castro live at that time?

Answer. In San Bautista.

Question 3. Where did you reside at that time.

Answer. In San Juan Bautista.

Question 4. How do you know that José Castro had authority to grant lands as stated by you on your direct examination?

Answer. By an "acuerdo" given by the governor of the department, which was made public.

Question 5. Was it in writing?

Answer. Yes; it was in writing.

The law agent here objects to the proof of the matter of said order of the governor in this mode, the same being in writing.

21 JOSÉ MARIA COVARRUBIAS.

The U. S. law agent being present.

Subscribed and sworn to before me on this 14th day of July, A. D. 1854.

PETER LOTT,
Com'r for taking testimony, &c.

Filed in office July 14, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 5, p. 166.

GEO. FISHER, *Sec'y.*

Deposition of José Maria Aguilar.

Before the board of United States land commissioners for California. No. 297, Manuel Larios, for land near San Juan Bautista.

SAN FRANCISCO, *July* 17, A. D. 1854.

On this day, before Commissioner Peter Lott, com'r for taking testimony, personally appeared José Maria Aguilar, a witness produced on behalf of the claimant, who being duly sworn, deposed as follows, in Spanish, his testimony being interpreted by the interpreter to said board, acting by consent of the United States law agent and the claimant's counsel.

Questions by claimant's counsel.

1st question. What is your name, age, and place of residence?

22 Answer. My name is José Maria Aguilar; I reside in San Francisco; and am 38 years of age.

Question 2d. Did you ever live in San Bautista, California, Monterey county; and if so, during what period?

Answer. I have lived there since the latter part of the year 1838 to the end of the year 1839.

Question 3d. Please look at the document filed in this case marked No. 1, annexed to the deposition of José Castro, and state whether you know the handwriting of José Castro and José Maria Covarrubias, whose names are attached to the bottom of said document; and state whether their names as appearing therein are or are not their genuine signatures.

Answer. I know the handwriting of the said parties, having often seen them write. Their signatures, as they appear on said document, are their genuine signatures.

Question 4th. Please state if you know the land described in said document; and if so, by whom, and since what time was it occupied during your residence in San Juan Bautista?

Ans. I know the land described in said document. It was first occupied by Manuel Larios, the claimant, about the year 1834 or 1835, and continued so to occupy it; and was in the occupancy

23 of it when I left there in 1839. He had cattle, and horses, and corrals.

Question 5. Please state what you know, if anything, in relation to the existence of an order in writing from the governor to the prefect, Don José Castro, to make the grant of the said tract of land. State all you know in relation to this.

Ans. Some time previous to the year 1839 I saw an order in writing signed by Governor Juan B. Alvarado, in which order José Castro, the prefect, was directed to give the possession of the said land to Manuel Larios. I do not recollect precise the year when I saw said order, but it was some time before I left; and during that period José Castro was acting as prefect, and I was employed in writing in his office. I do not know where that order is now. On my return from Mexico, whilst I was at San Juan at the office of the alcalde in search of some papers, I learned from said alcalde that the archives had been burnt.

6th question. What do you know of Manuel Larios being employed in the military service, before this land was occupied by him?

Answer. In 1838, when I first came to the country, he was so employed at the presidio at Monterey, and I understood from common report he had been so employed since the time of the King. He belonged to the army in favor of liberty of Mexico against Spain after the declaration of independence.

Cross-examined by U. S. law agent.

24 1st question. Did you know the contents of the order from Alvarado to Castro, of which you have spoken?

Answer. I do. The substance was that Castro should give possession of said rancho.

2d question. Did you ever see Manuel Larios in possession of said rancho?

Answer. I did.

J. MA. AGUILAR.

Subscribed and sworn to before me on this 17th day of July, A. D. 1854.

PETER LOTT,
Commissioner for taking testimony, &c.

Deposition of Manuel Castro.

UNITED STATES LAND COMMISSION,
San Francisco, July 21, 1854.

On this day, before commissioners sitting as a board, came Manuel Castro, a witness in behalf of the claimant, Manuel Larios, in case No. 297, who, after being duly sworn, deposes as follows, his evidence being interpreted by the secretary:

Questions by the claimant's counsel.

Question 1st. Please state whether you was the last prefect in California during the Mexican government for the district which included San Juan Bautista; and state further whether, since your
25 former deposition was given in this case, you have searched for the order from Governor Alvarado to the prefect, Don José Castro, directing to make a grant for the land in this case; and if so, when, in what place, at whose request, and with what success?

Answer. I was the last prefect for the district of Monterey, which included San Juan Bautista. I have searched among my papers for the order as described in the above question, since my former deposition was taken in this case, at the request of Mr. Horace Hawes, and have also requested the recorder of the county of Monterey to cause search to be made in his office for the said order, through the medium of Estephan Castro, without any success of finding the same. Mr. Hawes requested me to search for the said order in the capicity of attorney and counsel for Manuel Larios, the claimant in this case.

2d question. Whether the search you made for said order has been made with such diligence by you, as that you believe that there remains no reasonable prospect of finding it on any place with your knowledge?

Answer. I believe, perhaps it might be found in some other office of the government where there are Spanish or Mexican archives. I do not know where it is at present. I believe, it may perhaps be found in the office at Monterey, where I caused to be searched. I did not search the recorder's office at Monterey, but requested search to be made, as already stated in my answer to the first question. I cannot tell whether they made a thorough search or not, and whether
26 they examined any paper in the recorder's office. I charged them to make a thorough search, but the archives in the said office are not arranged, (arreglada.)

Question 3d. Look at document marked H. H. No. 1, annexed to the deposition of José Castro, in this case, and state who, during the term of your prefecture, was in the possession and occupancy of the land therein described, and who was recognized by the departmental government, the public authorities, and citizens as the owners thereof?

Answer. Manuel Larios occupied the land during my prefecturen, and he was generally recognized by all as the owner thereof.

Cross-examined by U. S. law agent.

Cross-int. 1. When did you go out of office of prefect?

Answer. About the month of December and November, 1846.

Cross-quest. 2d. Who was your successor?

Answer. I do not know. I went to Mexico, and this country was occupied by the Americans.

Cross-quest. 3d. To whom did you deliver the archives of your office?

Answer. I refer to my statement in my deposition taken be-
27 fore Commissioner Hiland Hall, on the 26th of February, 1853, in this case, for the answer to the above question, so far as that statement is pertinent to this question.

Cross-int. 4. Was there any circumstances connected with this order of the governor above stated, that drew your attention thereto at the time you was the prefect.

Answer. I do not recollect whether or not I had that order in my hands during the time I was the prefect; but I always understood there was an order to make a grant of land to the said Larios.

Cross-int. 5. What was the extent of the power to the prefect to grant land?

Answer. The prefects were authorized by law of the 20th March 1837, to grant at their option, and in conformity with other laws, lands in the pueblos, or the demarcation of the pueblos, according to the circumstances of the grantees and the lands, without limiting the quantity, and I now understand that they could grant as half sitio de ganada mayor.

Cross-int. 6 Had the prefect this authority without an order from the government; and if so why was this order issued at this time by the government?

Answer. I believe this order of the governor was not neces-
28 sary to give authority to the prefects; yet some prefects desired to act in accordance with the governor, and have received such orders.

Cross-int. 7. Do you know whether there were were any conditions in the said order ?

Answer. I do not remember.

Cross-int. 8. Was the petition of Manuel Larios for the grant of land in this case made direct to the governor, or through the medium of the prefect ?

Answer. I do not remember.

MAN'L CASTRO.

Subscribed and sworn to before the commissioners sitting as a board this the 21st day of June, A. D. 1854.

Attest: GEO. FISHER, *Sec'y.*

Filed in office July 21st, 1854.

GEO. FISHER, *Sec'y.*

Filed in office July 21st 1854.

GEO. FISHER, *Sec'y*

Recorded in Ev. B, page 292, vol. 5.

GEO. FISHER, *Sec'y.*

29 *Doc. H. H. No.* 1, *annex'd to the depo. of José Castro.*

PREFECTURA DEL 1ST DISTRICTO.

José Castro, teniente coronel de caball'a del ejercito y prefecto del districto :

Concedo y declaro dueno en propiedad de conformidad con lo dispuesto por el S'or gobernador al S'or teniente de milicias, Dn. Man'l Larios del terreno que á esta prefect'a solicito del camino read de en medio hasta la cumbre de la loma que mira á la poblacion de cuya altura una linea recta hasta en contra con los linderos de Dn. Juan Ausar por la espalda del rancho hasta los linderos del Sor. Gomes y los de Dn. José de los Stos' Abila.

El juez que diere posecion de este terreno, lo hara medir conforme con los puntos señalados.

Sn. Juan Bautiste, 4 de Mayo de 1839.

JOSE CASTRO.

JOSÉ MA. COVARRUBIAS, *S'rio.*

Filed in office Feb'y 26th, 1853.

GEO. FISHER, *Sec'y.*

30

31 *Translation of title.—Doc. H. H. No.* 1, *to depo. of José Castro.*

PROFECTORSHIP OF THE FIRST DISTRICT.

José Castro, lieutenant colonel of cavalry and prefect of the district:

I concede and declare owner in property, in conformity with that directed by the señor governor of the department, to señor lieut. of militia, Don Manuel Larios, of the tract which, from this prefectureship, he solicited, from the middle of the high road to the crest of the

hill, which unites to the settlement, from said hight a right line, until meeting with the limits of Don Juan Auzar, by the back of the rancho, to the boundaries of Señor Gomez, and those of Don José de los Santos Abéla.

The judge who shall give possession of this tract shall cause it to be measured according to the points designated.

San Juan Bautista, 4th May, 1839.

JOSE CASTRO.

JOSE MA. COVARRUBIAS, *Secretary.*

Filed in office August 5, 1852.

GEO. FISHER, *Sec'y.*

32

33 *Affidavit of Manuel Larios.*

In the matter of the claim No. 297 of Manuel Larios for lands near San Juan Bautista.

STATE OF CALIFORNIA, *County of San Francisco, ss:*

Manuel Larios, being duly sworn, deposeth and saith that he is the claimant and owner of the land referred to in the heading of this affidavit; that he has occupied said land continuously and without interruption, or any dispute of his right thereto, ever since the year 1834; that on the 4th of May, 1839, it was granted to him in full property by express order of the departmental government.

And deponent further says that in the year 1851 he contracted with Mess. Jones, Tompkins & Strode to present his claim for said land before the U. S. land commission for California, and handed them his title-papers; that Mr. Tompkins, one of said lawyers, is deceased, as he is informed, and that the said Jones & Strode having submitted his cause, both left the State, leaving deponent destitute of counsel; that after their departure, and after the case was thus submitted, he immediately came to San Francisco, and retained Horace Hawes to attend to this claim.

MANUEL LARIOS.

Sworn to and subscribed before me Feb'y 3d, 1854.

R. AUG. THOMPSON, *Comm'r.*

34 *Affidavit of Horace Hawes.*

SAN FRANCISCO COUNTY:

Horace Hawes, upon his solemn affirmation, says that he believes that the claimant before named has a just right to the confirmation of his said claim according to the Mexican laws, having fully examined the case, and that the deposition of Ramon Auzar and Claude Vasquez, taken and filed Feb. 2, 1854, contain material and important testimony fairly to be considered in the determination of said claim.

HORACE HAWES.

Affirmed and subscribed before me Feb. 7, 1854.

Motion.

In the case No. 297, above named, Horace Hawes, for the claimant, prays leave to file the depositions of Ramon Auzar and Claudeo Vasquez, taken before Com'r Thompson, *file 2d nunc pro tunc*, or, if refused, that the case may be reinstated for hearing in the order which the hon'l commissioners may direct.

HORACE HAWES,
Attorney for Claimant.

FEB. 7, 1853.

Subscribed and sworn to before me Feb'y 14, 1854.
ALPHEUS FELCH, *Commissioner.*

Filed in office Feb'y 7th, 1854.
GEO. FISHER, *Sec'y.*

35 *Affidavit of Horace Hawes.*

Board of U. S. land commissioners for California.

STATE OF CALIFORNIA,
County of San Francisco:

In the matter of the claim of Manuel Larios, No. 297, for lands near San Juan Bautista.

Horace Hawes states that he is of counsel for claimant; that he was retained as such after the case was submitted to this board in Oct. last; that the case was, in his opinion, improperly submitted without further proof; that, soon after the case was so submitted, the counsel, who, to that time, had been employed for the claimant, left the State (except Judge Tompkins, who was dead,) and have not returned; that the submission of the case, without sufficient proof and preparation, was wholly the fault of counsel, and not of the claimant; that it was submitted without even a brief or any argument in behalf of claimant, so far as this deponent has been able to discover; that the claimant, however, has a just and valid right to the land claimed, and has occupied it for nearly or quite twenty years, as deponent is informed by depositions taken in the case, and persons who profess to know the fact; that the order to make the grant of 4th of May, 1839, the right of José Castro to make it, and the validity of the claim of Larios, can be fully established, as deponent verily believes, and if not established, it is no manner the fault of the claimant, but of his counsel who submitted his case.

HORACE HAWES.

36 Sworn and subscribed before me this 4th day of April, 1854.
THOMPSON CAMPBELL, *Com'r.*

Motion.

No. 297, Manuel Larios, for lands near S. Juan B'ta.

Motion to reinstate the case on the docket for further evidence and rehearing.

HORACE HAWES,
For Claimant.

APRIL 4, 1854.

Filed in office April 4, 1854.

GEO. FISHER, *Sec'y.*

37 *Stipulation.*

Before the U. S. board of land commissioners for California.

In the matter of the claim of Manuel Larios, No. 297, for the land near San Juan Bautista.

It is stipulated and agreed that the depositions of Claudio Vasquez and Ramon Auzar, taken Feb. 2d, 1854, before Commissioner R. Aug. Thompson after the case had been submitted, shall be filed and received in evidence in the same manner and with the like effect as if they had been regularly taken while the case was open for proof.

J. H. McKUNE,
Law Agent.
HORACE HAWES,
Att'y for Claimant.

APRIL 22D, 1854.

Filed in office April 25, 1854.

GEO. FISHER, *Sec'y.*

Recorded in journal, vol. 3, p. 649.

GEO. FISHER, *Sec'y.*

Stipulation.

Before the U. S. board of land commissioners for California.

Claim No. 297, Manuel Larios, for lands near San Juan Bautista.

It is admitted by the law agent that the claimant has caused search to be made with due diligence in the archives remaining in the office and charge of the surveyor general of the U. S. for California, for the order from the governor to the prefect, Don José Castro, which the latter refers to in his deposition relating to the granting of the
38 land in question, and that said order cannot be found.

LOUIS BLANDING,
U. S. Asso. Law Agent.

JULY 21ST, 1854.

Filed in office July 21, 1854.

GEO. FISHER, *Sec'y.*

Recorded in journal, vol. 3, p. 730.

Stipulation.

Before the U. S. land commission.

MANUEL LARIOS } Claim 297.
vs.
UNITED STATES. }

In a document or titulo dated Oct. 7, 1842, signed by Governor Alvarado and Sec'y Jimeno, Manuel Larios is expressly recognized as owner of the rancho, (see Doc. A., Claim No. 680.) It is a grant to D'n Manuel Antonio Linares of part "Los Carnera," which is described in said document as bounded by the rancho of D'n Juan Auzar, (the Aromitas, No. 20, confirmed,) by that of Joaquin Gomez, (claim No. ,) and by that of Don Manuel Larios, Ranchito of San Antonio, No. 297.

Also in another document, thereto annexed, dated July 12, 1843, and signed by José Castro, Manuel Larios is again recognized as the owner, and an agreement which took place between him and José de los S'tos Abila respecting boundaries, in presence of the prefect and secretary is referred to.

The commissioners may refer to the papers above mentioned
39 for any purposes they may deem relevant to this case, No. 297.

LOUIS BLANDING,
U. S. Law Agent.
HORACE HAWES,
For Claimant.

Filed in office Aug't 25, 1854.

GEO. FISHER, *Sec'y.*

Recorded in journal, vol. 3, page 19.

GEO. FISHER, *Sec'y.*

40
41 *A. P. L.—Exhibit to depo. of Juan B. Alvarado.—March* 14, 1855.

Año de 1843.

Escritura publica en favor de D. Juan Auzar, otorgada por D. Patronillo Rios, con poder bastante de la Senora D'n Antonia Huarez de un terreno constante, y ano casa fincada en el mismo.

Sello cuarto, dos Reals. Habilitado provisionalmente por la aduana maritima del puento de Monterey en el departamento de las Californias para el año de mil ochocientos cuarenta y tres

MANUEL CASTANARES.
[SELLO.] MICHELTORENO.

En la capital de Monterey, à catorce de Julio de mil ochocientos cuarenta y tres. Ante mi José Z. Fernandez, juez de paz de este demarcacion por la 11o de las vases puades en Tacubaya y de la instancia del districto actuando con dos testigos de assistencia à falta de todo escribano à mas de los instrumentales de que al fin se hara mencion parecio de presente el C. Patronello Rios y dijo; que à nombre de su poderante la que por si sus herederos sucessores, y de

quien de ellos hubieren titulo, voz, y causa vende y da en venta publica y enagenacion uerpetua por puro de heredad y para siempre jamas à D. Juan Auzar, un terreno que adjunto con justo titulo del gobierno del departamento su fecha siete de Octubre de mil ochocientos cuarenta y dos constante de un sitio de ganado mayor y
42 se halla situado en el paraje nombrado Los Carneros y colinda con el comprador con D. Joaquin Soto con D. Joaquin Gomez y con D'n Manuel Larios; cuyo titulo doy fè haber vista y mandè unir al testimonio de esta escritura que se ha de entrega al interesado; asì como tambien correa unidos una nota del Señor prefecto su fecho diez y seis de Agosto de mil ochocientos treinta y nueve. Y dos certificaciones de teniente coronel y comandante militar de esta plaza, D'n José Castro que acreditan el derecho que le asiste à la linares asì al terreno como à una casa fincada en el que igualmente bende al suso dicho Auzar, declarando como declara, que es de su propiedad cobantada à su costa y mencion y que esta libre de todo gravamen publico, perpetuo, temporal, general, especial, tacito o espreso, y como tal bende el terreno y casa en precio y cuentra de dos cientos cincuenta pesos en plata de bueno moneda à cañada y comun que debera percibio del Referido Auzar, en el temino de un mes; y sobre no parecio de presente, la entrega renuncia las leyes de ella las de su prueba y pago del recibo como en ello se contiene asi mismo declara que tiene por justo precio y verdadero valor de dicho rancho y casa la enunciada cantidad que no vale mas y si mas valor pudiere del exceso en mucho o poca suma hace à favor del comprador y de sus herederos, y sucesores gracia y donacion justa perfecta e irrevocable que en derecho sellama *inter vivos* con insinuacion y demas firmesas legales renunciando la ley 4o titulo 7o libro 5o de la recopilacion y las demas que hablan de la lecion en mas ô menos de la mitad del justo precio y los cuatro años que prefiera para pedir su recesion ô suplemento los queda por parados; y desde hoy la adelante
43 se desprende y de sposa para siempre del dominio posecion señorio titulo o otro recurso que le competa al enunciado rancho y casa y lo remacia y traspose en el comprador para que disponga de ellos como de cosa propia y le confiere poder irrevocable con libre franca y general administracion para que de su autoridad aprenda la real tenencia y posecion q'l por derecho le compete. Obligandose el otorgante à que esta venta le sera cierto segura y efectiva al comprador y nadie, le inquietora ni movera pleito sobre su propiedad y posecion ni contra la casa aparecera gravamen alguar y si se le inquietere saldra à su defensa hasta dejarlo en quieta y pacifica posecion y de no conseguirlo le sera debuelta, la espresada cantidad de doscientos cincuenta pesos que recibira el otorgante con las mejoras utiles que tenga y todas los costos; perjuicios y menos cabos que se le siguieren. Pa la observencen y validacion de todo lo referido obliga los bienes de su poderante, presentes y futuros y con ellos se somete al fuero y jurisdiccion de los señores jueces que de sus causas puedan y deben conocer conforme à derecho para que à su cumplimiento compelan y apremien à su poderante por haber renunciado espresamente las leyes 2, ti'lo 12, part 5o, y ti'lo 3o, lib'o 5, recopilacion como sentencia dada consentida y no apelada en antoridad de

cosa jusgada, y por ultimo remucia las leyes que en el caso la favorescan y la general del d'cho en forma. En cuyo testimonio asi lo otorgo y firmo en este registro conmigo y los de mi asistencia siendo los instrumentales D'n Florencio Serrano, D'n Jose M'n. Camfina, y D'n Ygnacio Orosco presentes y vecinos doy fè

44 JOSÉ Z. HERNANDEZ.
JUAN MIGUEL AUZAR.
PETRONILLO RIOS.

Assist'n:
JOSÉ ANT'O CHAVES.
JOSÉ FRANCISCO ALVAREZ.

Es copia fielmente sacada de su registro hoy dia su otorgamento al que en caso necesario me remito, va en un pliego de papel del sello cuarto sue niuguna consecion, siendo testigos de varla copiar con cluton D'n Eurique Cambuston.

MONTEREY, *catorce de Julio, de* 1843.

JOSE Z. HERNANDEZ.

Ass's:
JOSÉ A. CHAVES,
JOSÉ F. ALVAREZ.

Prefectura del 1o distrito.

Mientras adquiere V. la propiedad del terreno que ha solicitado llamado Los Peñascates puedo V. establecer su casa en la parte de la Cañada de los Carneros que comprehende la misma solicitud y hacer alli las siembras que necesite para la subsistencia de su familia. Lo que digo à V. para su satisfaccion y como resultado de su carta como pide nisal de 14 del cor'nte mes.

Dios y libertad. S. Juan de Castro, Agosto 16 de 1839.

JOSE CASTRO.

À DON JOSÉ DE LOS SANTOS ABILA.

Sello tercero, dos reales.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

JIMENO.
ANTONIO MARIA OSIO.

45 Revalidado por los años de 1842 y 1843.

ALVARADO.
ANTONIO M'A OSIO.

Juan B. Alvarado, governor constitucional del departamento de los Californias.

Por cuanto D'n Maria Antonio Linares ha pretendido para su be n ficio personal y el de su familia una parte del terreno que se con o con el nombre de Los Carneros, colindante con el rancho de D'n Ju a

Anzar, con el de D'n Joaquin Soto, con el de D'n Joaquin Gomez, y con el de D'n Manuel Larios: practicada preveam'te las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas à nombre de la nacion Mexicana, he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras sujetandose à la aprobacion de la ex'ma junta departamental y bajo las condiciones siguientes.

1a. Podra cercarlo sin perjudicar las travesias, caminos y servidumbres, lo disfrutara libre y esclusivamente destinandolo al uso y cultivo que mas le acomode; pero dentro de un año fabricara casa y estara habitada.

2a. Solicitara del juez respectivo que le de la posecion juridica en virtud de esto despacho por el cual se demarcaran los linderos en cuyos limites pondra à mas de las mojoneras algunos arboles frutales ò silvestres de alguna utilidad.

3a. El terreno de que se hace donacion es de un sitio de ganado mayor segun esplica el diseño que corre agregado al exped'te respectivo.

El juez que diere lo posecion la hara medir conforme à orde-
46 nanza quedando el sobrante que resulte à la nacion para los usos convenientes.

4o. Si contraviniere a estos condiciones perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando de que teniendose por firme y valedero el presente titulo se tome razon de el en el libro respectivo y se entregue à la interesada.

Sello tercero, dos reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de los Californias, para los años de mil ochocientos cuarento y mil ochocientos cuarenta y una.

JIMENO.
ANTONIO M'A OSIO.

Revalidado para los años de mil ochocientos cuarenta y dos y 1843.

ALVARADO.
ANTONIO M'A OSIO.

Para su resguardo y demas fines.

Dado la Monterey à siete de Octubre de mil ochocientos cuarenta y dos.

JUAN B. ALVARADO.
MAN'L JIMENO, *Sec'y.*

Queda tomada razon de este despacho en el libro de asientos sobre adjudicaciones de terrenos valdios á fojas 16.

JIMENO.

Sello cuarto. [SEAL.] Una cuartilla.

Para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.
Revalidado para los años de 1842 y 1843.

ESTRADA.
ANTONIC M'A OSIO.

El ciu'o Castro teniente coronel y comandante del escuadron f'yo de California y actualmente comt'e militar de este plaza, certifice
47 que el año de 1839 que fue prefecto de este distrito el mes de Julio del mismo año, el Ciu'o Manuel Larios teniente de auxiliares, se presente à la misma en donde convino limitar el terreno que tener solicitado dejando una parte à favor del ciu'o José de los Santos Abila libre y espontaneam'te en cuyo fundam'te apojé la nota de 16 de Agosto del año espresada que tiene en su poder como en las demas informaciones necesarias habiendo reconocido previamt'e con presencia de mi s'rio que la era Don José M'a Covarrubias el terreno que indico de que hizo de imta'do el referido Larios, y para los fines que al interesado convenga doy este asi jurando ser la verdad bajo mi palabra de honor en Monterey à 12 de Julio de 1843.

JOSE CASTRO.

Sello cuarto. [SEAL.] Una cuartilla.

Para los años de mil ochocientos cuarenta y uno.
Revalidado para los años de 1842 y 1843.

ESTRADA.
ANTONIO M'A OSIO.

El ciu'o José Castro, teniente coronel y actualm'te comandante de este plaza.

Certifico que el año de 1839 que fue pref'a de este distrito al estender la nota oficial de 16 de Agosto del mismo relativa à permitir al cino' José de los Santos Abila establecer su casa y labores en una parte de los Carneros estaba informada por algunos testigos de la posecion que
48 se dio à Dn. Juan Auzar que aquel terreno quedo fuera del termino de donde este debia poner sus mohoneras y que tambien estaba cierta que lo habran, ocupado algu's Indios que en aquella t'ha lo tenean abandonado y para los fines que convenga à los intersados doy este asegurando ser la verdad bajo mi palabra de honor en Monterey à 12 de Julio de 1843.

JOSE CASTRO.

Filed in office March 1, 1853.

GEO. FISHER, *Sec'y.*

49 *Translation A in No.* 680.—*A. P. L. to depo. of J. B. Alvarado.*

Anno Domini 1843.

Record of the deed in favor of Don Juan Miguel Auzar by Don Petronello Rios, with full authority to do so from Mrs. Doña Antonia

Linares, to a tract of land comprising one square league, and a house erected upon the said rancho.

Seal fourth. { Martime custom-house. Monterey. } Two reals, (25 cts.)

Established provisionally by the maritime custom-house of Monterey, in the department of the Californias, for the year one thousand eight hundred and forty-three.

MICHELTORENA.
MANUEL CASTANARES.

At this capital, city of Monterey, on the fourteenth day of July, one thousand eight hundred and forty-three, before me, José Z. Fernandez, justice of the peace of this jurisdiction, under the 11th article of the plan adopted and sworn to at Tacubaya, and also of the primary court of claims of this district, acting jointly with two assisting witnesses, in default of any public notary, and together with the instrument hereinafter mentioned, personally appeared the citizen Petronello Rios, who, having full power therein from the Senora Doña Antonia Linares, said:

That in the name of his constituent, who for herself, her heirs and successors, and of whomsoever of them may have title, interest, and right thereon, he (P. Rios) sells and bargains, at public sale, and in perpetual alienation by right of inheritance, and forever, unto Don Juan Auzar, a piece of land which she obtained under lawful title from the government of the department, dated seventh of October, one thousand eight hundred and forty-two, comprising one
50 square league, (un sitio de ganado mayor,) situate at the place called "Los Carneros," and which is contiguous to the possessions of the purchaser, to those of Don Joaquin Soto, Don Joaquin Gomez, and of Don Manuel Larios; which said title I hereby certify to have seen, and ordered the same to be attached to the copy of this record, which is to be delivered to the interested party; and I furthermore certify that there is annexed thereto a note from his honor the prefect, dated August sixteenth, one thousand eight hundred and thirty-nine, and two certificates from the lieutenant colonel and military comandante of this place, which prove the legal right of Mrs. Linares both to the land and to a house erected thereon, which (latter) he (P. Rios) also sells unto the aforesaid Auzar, declaring, as he hereby declares, that she is the lawful owner of the same; that it was put up at her cost, and that it is free from all public, perpetual, temporal, general, specific, tacit or expressed, incumbrance; and as such he (P. Rios) sells both the land and the house, in the price and for the sum of two hundred and fifty dollars of silver, of good coined and current money, which he shall receive from the above-mentioned Auzar in the term of one month; and if he not present at said delivery he renounces the laws relating to the same, those relating to its proof and payment, as therein contained. He likewise declares that the amount aforesaid is the just price and true value of the said ranch and house; that it is not worth more, and if it should be worth more, of the excess thereof, whether of great or small amount, he makes in

favor of the purchaser, and of his heirs and successors a grant and donation, just, perfect, and irrevocable, the which in law is
51 termed *intervios* by this present exhibit, and the other binding legal formalities, renouncing the 4th law, tit'e 7th, book 5th of the Collection of the Statutes, and such other laws as relate to damages, in more or less than the one half of estimated value, and to the four years prefixed, within which to ask for its recession or substitution, which period he considers as having elapsed; and from this day henceforth he gives away and abandons forever the dominion, possession, ownership, title, or other right which she (Mrs. Linares) may have to the before-mentioned rancho and house; and he (Rios) renounces and transfers the same unto the purchaser, (Auzar,) that he may dispose of them as if they were his own; and he (Rios) confers irrevocable authority upon him, (Auzar,) with free, full, and general administration therein; that he (Auzar) may, from his said authority, claim the tenure and possession which by law he is entitled to therein, the grantee binding himself that this sale shall be certain, sure, and effective unto the purchaser, and that no one shall molest him therein, nor enter suit against his said property and possession, and that no encumbrance shall appear upon said house; and if he should be molested, that he (the grantor) shall defend him unto the quiet and peaceable possession thereof, and failing so to do the aforementioned sum of two hundred and fifty dollars shall be returned to him, (the purchaser,) which the grantor shall produce, together with the valuable improvements he (the purchaser) may have made, and the expenses, damages, and losses which may thereon ensue to him. And for the performance and validity of all of the above mentioned, he (Rios) pledges the property of his constituent, as well in possession
52 as in expectancy, and with them he submits to the decision and jurisdiction of their honors, the judges who may be duly authorized to take cognizance of his causes, provided by law, that they may compel and obligate his constituent unto the fulfilment thereof, she having expressly renounced the laws (2, tit. 12, sec. 5th and 9th, tit. 3a, Lib. 5th, of the Collection of the Statutes) as a sentence given by counsel and not appealed from, as in a case of a sentence passed on a thing tried, judged, and affirmed; and, lastly, he renounces the laws which may protect him in said case, and also the general one, of right in law.

In testimony whereof I, myself, thus grant and sign this in this book of records, together with those acting as my assistants herein, Messrs. Don Florencio Serra, Don José Maria Campina, and Ignacio Orosco, being the instruments and citizens here personally present.

Attested: JOSE Z. FERNANDES.
PETRONOLLO RIOS.
JUAN MIGUEL AUZAR.

Ass't: JOSE ANTONIO CHAVEZ.
Ass't: JOSE FRANCISCO ALVAREZ.

This is a true copy, taken from the record made on this the day of its execution, and to which I refer in case of necessity; it is written on a sheet of stamped paper, bearing seal fourth, and without amend-

ment whatever, Don Enrique Cambuston being witness to the copying and collating thereof.

Monterey, fourteenth of July, A. D. 1843.

JOSE Z. FERNANDEZ.

Ass't: JOSE A. CHAVES.
Ass't: JOSE F. ALVAREZ.

53 OFFICE OF THE PREFECT OF THE FIRST DISTRICT.

SIR: Whilst awaiting your being put in possession of the land which you have solicited and called "Los Penasates," you can put up your house on that part of the "Canada de los Carneros," comprehended in the same petition, and thereon cultivate such fields as you may require for the support of your family. I communicate this to you for your satisfaction, and as the result of your private letter the 14th inst.

God and liberty, SAN JUAN DE CASTRO.

August 16th, 1839.

José Castro to Don José de los Santos Abilos.

Seal third, two reales (25 cts.)

Established provisionally by the maritime custom house of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty *and forty* and one thousand eight hundred and forty-one.

ANTONIO MARIA OSIO.
JIMENO.

Re-established for the years 1842 and 1843.

ANTONIO MARIA OSIO.
ALVARADO.

Juan B. Alvarado, constitutional governor of the department of the Californias.

Whereas Dona Maria Antonio Linares has solicited for his personal benefit and that of her family a part of the land which is known by the name of "Los Carneros," bordering upon the rancho of Don Juan Auzar, upon that of Don Joaquin Gomez, and
54 upon that of Don Manuel Larios, all the preliminary judicial inquiries and formalities having been taken as provided therein by the laws and regulations, by virtue of authority in me vested, and in the name of the Mexican nation, I do hereby grant unto her the aforementioned land, declaring the ownership thereof to be in her by these present letters patent, subject to the approbation of the most hon'bl junta of the department, and under the following conditions:

1st. She shall be authorized to fence the same without detriment to the public crossings, rights of way, and roads; he shall enjoy the same freely and exclusively, making such use of and cultivating it

in such manner as she shall deem best, but she shall thereon within one year erect a house, which shall be inhabited.

2d. She shall solicit from the competent judge that judicial possession thereof be given to her in virtue of this decree, by whom the boundaries shall be made out, and at the limits of which, independently of the monuments, some fruit or useful trees shall be placed.

3d. The land of which grant is made is one square league in extent, (un sitio de ganado mayor,) as shown by the plan which is attached to the corresponding warrant.

The judge who shall give possession thereof shall cause the same to be measured as provided by the ordinance, and the remainder thereof shall accrue to the nation for its purposes.

4th. Should she fail to comply with these conditions she shall lose her title to the land, and it shall be subject to denouncement by another person.

55 Wherefore I command that this present title, being held as binding and valid, a record of the same be made in the book relating to the same, and that it be delivered to the party interested for her security and other ends.

Given in Monterey this 7th day of October, one thousand eight hundred and forty-two.

JUAN B. ALVARADO.
MANUEL JIMENO, *Sec'ty.*

A record of this deed has been made in the book of records relating to grants of lands at page 160.

JIMENO.

Seal fourth, one cuartella, (3 cts).

For the years one thousand eight hundred and forty, and one thousand eight hundred and forty-one.

Re-established for the years of 1842 and 1843.

ANTONIO MARIA OSIO.
ESTRADA.

The citizen José Castro, lieutenant colonel and commandant of the regular troop of horse of California, and at present military commandant of this port

I certify that in the year 1839, while I held the office of prefect of this district, in the month of July of the same year, the citizen Manuel Larios, lieutenant of the auxiliary troops, presented himself at my office, and there and then did agree to diminish the extent of the land which he had solicited, relinquishing a portion of the same in

56 favor of the citizen José de los Santos Abila, freely and voluntarily, in consideration whereof, and of all other necessary information, I issued the note dated 16th of August of the aforementioned year, which he now has in his possession, the said Larios having first acknowledged in presence of my secretary, Don José Maria Covarrubias, the land of which he makes the abandonment. And for

such uses as the party interested may have, I give this, declaring the same to be the truth, under my word of honor.

At Monterey, this 12th day of July, 1843.

JOSE CASTRO.

Seal fourth, one cuartella, (3 cts.)

For the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

Revalidadated for the years 1842 and 1843.

ANTONIO MARIA OSIO.
ESTRADA.

The citizen José Castro, lieutenant colonel, and at this time comandant of this port.

I certify that in the year 1839, while I held the office of prefect of this district, at the time of writing the official note of the 16th of August of the same year, in which I authorize the citizen José de los Santos Abila to erect his house upon and to cultivate a portion of "Los Carneros," I was informed by some witnesses to the possession given to Don Juan Auzar that said land was without the limits in which he was to place his monuments, and that it was also true that some Indians who had occupied it had at that time abandoned it. And for the uses which may avail the parties in-
57 terested I give this, declaring the same to be the truth, upon my word of honor.

At Monterey, this 12th day of July, 1843.

JOSE CASTRO.

Filed in office March 1, 1843.

GEO. FISHER, *Sec'y.*

Opinion of board of by Com'r Thompson.

MANUEL LARIOS
vs.
THE UNITED STATES. } Lands near San Juan Bautista, Monterey Co.

This is a claim for about one square league of land, and purports to be founded on a grant made by José Castro, prefect of the district, on the 4th of May, 1839, in pursuance of an order to that effect from the governor of the department, the original of which is filed in the case and proved to be genuine.

It is in proof that the claimant has occupied the premises ever since the year 1835; that he had on it a house in which he resided with his family, stock of sheep and horses, and portions of the land enclosed and in cultivation, which occupation has been continued up to the present time.

It further appears from the evidence that the right of possession and ownership over the land claimed has been exercised by the claimant, and recognized and respected by the adjoining land owners and the public authorities of the department without question or
58 dispute, from the date of the grant up to the time the Americans occupied the country.

These facts are certainly sufficient to raise a strong equity in favor of the claimant. Several legal objections are, however, raised to the validity of the grant, which we will now proceed to consider.

The first of these, having reference to the absence of the conditions of occupation or cultivation, and the insufficiency of the description to locate and identify the land, are in a great measure removed by the recent decisions of the Supreme Court upon these points. We may remark, however, in relation to them, that the evidence shows that all these conditions had been complied with prior to the making of the grant; and we find that it was a common custom of the governors of California to omit those conditions in the ordering colonization grants where the fact of their prior performance by the applicant was brought to his knowledge.

The descriptions contained in that document, taken in connection with the other evidence in the case, are also, in our opinion, sufficient to fix the location of the land and enable the surveyor to establish its boundaries.

The confirmation of the claim is resisted on other grounds, which go to the validity of the grant itself; and as these objections have an important bearing on other cases now pending before the commission for decision, they claim from us our most attentive consideration.

They are:

1st. That if the grant is held to be the grant of the prefect by virtue of his own authority, it is invalid; because that officer did not possess the power to make grants of land; and,

59 2nd. If it was made by virtue of the order of the governor referred to in the grant, it is equally invalid, because the latter officer had no authority to delegate to another the power of disposing of the public domain conferred on him by the laws and regulations of the supreme government.

In attempting to ascertain the precise extent of the powers and authority conferred upon the public functionaries in California by the laws of Mexico, we meet with almost insuperable difficulties.

The constant succession of revolutions which have characterized her history from the commencement of her political existence as a nation, and the incessant change in her organic and other laws, consequent upon those political convulsions, has rendered it almost impossible to ascertain what particular system or what laws were in force at any one time.

The authorities themselves seem to have had very vague and indefinite ideas of the nature and extent of their powers, or of the source from which they were derived. Sometimes they refer to the Spanish constitution of 1811, and the laws of the cortes passed under it as the authority for their official acts; sometimes to their own constitution of 1824, and the laws of Congress; and again to some special order of the supreme government.

The revolution of 1836 resulted in the destruction of the State government and the federal system, and the adoption of a new constitution, which went into effect on the first of January, 1837, by which the territory of the republic was divided into departments, dis-

60 tricts and partidos, at the head of each of which is constituted a chief executive officer.

The original law of the 20th of March, 1837, designates the officers who shall preside respectively over those political divisions, and defines their powers and duties.

An examination of those provisions shows that they established a complete system of colonization, radiating from the chief executive head of the nation down to the justices of peace of the towns. It consisted first of the president of the republic, whose jurisdiction, in connection with the general Congress, extended over the entire nation; secondly, the governors of the departmental juntas; third, the prefects of the districts; fourth, the sub-prefects of the partidos; and fifth, the ayuntamientos and the alcaldes or justices of the peace of the towns, as their population or other circumstances entitled them to the one or the other organization.

The power of the prefects to grant the common lands of the towns is claimed to be derived from the 77th article of this law, under the head "de los prefectos," which is in the following terms:

They (the prefects) shall regularly (arreglaran) executively (gubornatiamente) and conformably to the laws, the distribution of (repartemiento) of the common lands (terrenos communes) in the towns (pueblos) of the districts whenever there is no litigation pending in the tribunals respecting them, reserving to the parties their right to appeal to the governor, who, without further cause, will decide the matter as may be proper with the concurrence of the departmental junto.

61 It is contended by the associate law agent that this section gives to the prefect no power to dispose of the public lands by grant, but simply a right to regulate, to prescribe rules by which the distribution shall be governed. The first he says is a high prerogative; the second, the subordinate executive power, and with this latter the prefect was invested by law and with no greater authority. If the Spanish word (arregla) simply meant to regulate, and it stood alone in the article, and without qualification, the construction here contended for would be a correct one; but a reference to the dictionary will show that its technical meaning, in which sense it is used here, is "to adjust the administration of provinces, and to enact laws for them." Taking this meaning in connection with the word "gubanatoramento," translated executively, which immediately follows, it would appear plainly to imply that the prefect was not only invested with the power to adopt general regulations for the distribution, (repartamento,) the word generally used to signify the granting of the common lands of the pueblos, but also with the authority to execute or carry them into effect by granting the lands with a right of appeal to the governor or departmental junto, to whom the general administration of the public lands of the department was committed. It is true that the power to grant lands is a prerogative of the government, but like all other sovereign or prerogative powers, it can only be exercised by means of subordinate agents, and the object of the article under consideration appears to have been to commit the administration and distribution of the common lands of the towns to the prefects,

subject to the supervisory and appellate authority of the gov-
62 ernors in the same manner as the general disposition of the public lands of the department was entrusted to the latter; this is clearly implied by the use of the word "gubernatamente;" to adopt the construction of the associate law agent would make that word mere surplusage, without force or meaning; whereas from its frequent occurrence in other parts of the law, it is very clear that it is a definite meaning, and was not used without a purpose.

An examination of this organic law of the 20th March, 1837, under the two general law heads "de los gobernadores" and "de los prefectos" will show that the enumeration of the functions, powers and duties of two officers were, with some exceptions, almost identical within the sphere of their respective jurisdictions, and that its general effect was to confer on the prefect the same authority over the subject matters committed to his charge in the district which was exercised by the governor in the department, the powers of the former, however, being exercised in subordination to and under the general supervision of the latter, to whom he was directly responsible.

The distribution of the common lands of the towns being therefore committed to the prefect to administer gubernatorially, or as it might be rendered with governmental functions, would necessarily include the power to make or issue grants of those lands in the same manner as the governor makes or refuses to make grants of the other public lands of the department, reserving in the former place the right of appeal to the governor and assembly.

63 This construction appears also to be in accordance with that given to the law by the Mexican authorities.

The general rule laid down by the Supreme Court in construing statutes is to adopt the construction made by the courts of the country, by whose legislation the statute was enacted.—(5th Peters, 264.) In order to ascertain the local construction of the laws of Mexico, where no reports of judicial proceedings are made or published, we must look to that put upon it by those to whom the administration of the laws were committed, as recognized and acquiesced in by the other constituted authorities.

The reason of the rule above would clearly justify such a course, as, in the absence of judicial authority, it furnishes the only means by which we can ascertain the construction given to the law by the government which created it. Adopting this rule then, it is very clear that the law we are considering conferred on the prefects the power to grant the common lands of the town.

José Castro, who made the grant filed in this case, and Manuel Castro, whose depositions are taken and filed in the case, both of whom filled the office of prefect, affirm the existence of this power, and that it was exercised by them on various occasions by the virtue of their office, under the authority of the constitution of 1836 and the law of March 20, 1837.

The legality and validity of the grants made by them, so far as we have been able to discover, have never been called in question, and in the present case at least the rights of the grantee to the premises appear to have been generally acquiesced in by the adjoining proprie-

tors, and were expressly recognized by the authorities of the
64 department in subsequent official acts, the evidence of which is admitted by stipulation with the U. S. associate law agent.

The construction thus put the law by the Mexican authorities, together with the uniform recognition of and acquiescence in its correctness, is, in our opinion, equivalent to a judicial exposition of its true intent and meaning, and as such, should be the rule of construction in the United States tribunal.

But the grant in this case purports upon its face to be made in obedience to an express order of the governor, and it is contended on the part of the claimant that this authority of the governor was sufficient to give validity to the grant, even if the prefect did not otherwise possess the power to make it.

To this it is objected on the part of the United States, that although the governor possessed the general power to make grants of lands in their respective departments, yet it was a special personal trust, which they had no right to delegate to another.

The views of the associate law agent on the question are upon general principles undoubtedly correct, but we much doubt whether they can with propriety be applied in all their strictness to the Mexican laws now under consideration.

The right of substitution or the delegation of the power to alienate the 'propios" and "arbitrios," including lands as well as other property of the towns, with the consent of the departmental junta, is expressly given in the 9th article of the law of 20 of March,
65 1837, and under the head of "de los gobernadores."

The prefects were mere creatures of the governor. They were appointed by him, were removable at his pleasure and exercised all their functions in subjection to his authority; in the 3d section of the 63d article "de los prefectos," he is expressly enjoined to execute the orders of the governor, and from all his acts an appeal lay directly to that officer, whose decision in the matter was final.

Whether, therefore, we regard the provisions of the 9th section above quoted as an exception to the rule, or as the recognition by implication of a general right of substitution, or delegation of his power over the subject committed to his charge, the controlling authority over the prefects given him by the law would, in our opinion, authorize that officer, acting under his orders, to make such a provisional grant as would, when coupled with the long continued occupation and subsequent recognition by the authorities which is shown in this case, give him a right in equity to demand the legal title from the government. In either aspect of the question, we think the claimant is entitled to a confirmation, and a decree will be entered accordingly.

Filed in office June 19, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Record of Decisions, vol. 3, page 76.

GEO. FISHER, *Sec'y.*

66 *Decree.*

MANUEL LARIOS
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is valid, and it is therefore decreed that the same be confirmed.

The land of which confirmation is made is situated in the county of Monterey, near the town of San Juan Bautista, being the same which was granted to the present claimants by José Castro on the 4th of May, 1839, and has been held and occupied by him ever since.

It is bounded road known as the "Camino Real de en Medio," as far as the top of the hill which looks towards the "Poblacion," by the lands of Senor Gomez, those of Don Juan Emson, and those of José de los Santos Abila; for a more particular description reference to be had to the original grant, and the deposition of Ramon Ansar, filed among the papers in the case.

R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office June 19, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Record of Decisions, vol. 3, page 81.

GEO. FISHER, *Sec'y.*

67 And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the southern district of California, it is ordered that two transcripts of the proceedings and decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other be transmitted to the Attorney General of the United States.

68 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing sixty-four pages, numbered from 1 to 64, both inclusive, to contain a full, true, and correct transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office in case No. 297 on the docket of the said board, wherein Manuel Larios is the claimant against the United States for the place known by the name of land near the mission of San Juan Bautista.

In testimony whereof I hereunto set my hand and affix my private seal (not having a seal of office,) at San Francisco, California, this eighth day of November, A. D. 1855, and of the independence of the United States of America the eightieth.

[SEAL.]

GEO. FISHER, *Sec'y.*

Filed Nov. 24th, 1855.

C. E. CARR, *Clerk.*

69 *Appeal.*

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, Dec. 31, 1855.

297.—"Land near the Mission San Juan Bautista," Manuel Larios, claimant.

You will please take notice that to the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 3rd day of Dec., 1855, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

C. CUSHING,
Attorney General.

Filed Feb'y 12th, 1856.

C. E. CARR, *Cl'k.*

70

71 In the district court of the United States for the southern district of California.

CITY AND COUNTY OF LOS ANGELES,
State of California:

MANUEL LARIOS *ads.* THE UNITED STATES. } Docket No. 325.—Transcript No. 297.

To the Hon. Isaac S. K. Ogier, judge:

The petition of Pacificus Ord, a resident of said city, county, and State, attorney of the United States for the southern district of California, who petitions in this behalf for the United States, and being present here in court, in the name and behalf of the United States, represents as follows: That heretofore, to wit, on or about the 5th day of August, A. D. 1852, Manuel Larios presented a petition to the commissioners to ascertain and settle the private land claims in the State of California, when sitting as a board, claiming a tract of land near the mission of San Juan Bautista, in the county of Monterey, State of California, which said petition is referred to for a description of the land claimed, a copy of which appears in the transcript hereafter referred to; that thereafter, to wit, on or about the 19th

day of June, A. D. 1855, the said commissioners confirmed, by final decision, the said claim of said petitioner; that thereafter, to wit, on or about the 24th day of November, A. D. 1855, a duly certified transcript of the proceedings and decision of the said commissioners in said cause, and the papers and evidence on which the said decision was founded, was filed in the office of the clerk of the district court of the United States for the southern district of California, and marked No. 297, reference to which it is prayed may be had and made part of this petition; that on or aboutt he 3rd day of December, A. D. 1855, the honorable Caleb Cushing, Attorney General of the United States, received a duly certified duplicate of said transcript of the proceedings and decision of said commissioners in said cause, and the papers and evidence on which said decision was founded; that thereafter, to wit, on the 12th day of February, A. D. 1856, the said Attorney General of the United States filed, or caused to be filed, in behalf of the United States, a notice with the clerk of said district court of the United States, that the appeal in said cause from the said decision of the said commissioners, in the district court of the United States for the southern district of California, would be prosecuted by the United States. Your petitioner further represents that the land claimed as aforesaid, is situate in the southern district of California, and within the jurisdiction of this honorable court. Your petitioner further represents and insists that the said claim is invalid; and the said decision of said commissioners is erroneous, and ought to be reversed, revised, and set aside, for many errors and imperfections of law and evidence, apparent in said certified transcript of the
72 proceedings and decisions of said commissioners in said cause, filed and appealed from as aforesaid. And your petitioner denies all and singular each and every allegation in the said petition of said claimant, presented as aforesaid to said commissioners. And your petitioner further denies that the said claimant has any valid right or title to said land claimed as aforesaid, or any part thereof.

And no sufficient proof having been made of the allegations in said petition to said commissioners, or in support of the said claim, no decision confirming the same should have been made by said commissioners; but the said claim should have been rejected by them. And the said claimant, having no valid right or title derived from the Spanish or Mexican governments to the land claimed as aforesaid, the lawful right and title in and to the said land was acquired by, and it now belongs to, the United States, by virtue of conquest and the treaty of peace, friendship, limits, and settlement between the United States and the republic of Mexico, made at the city of Guadalupe Hidalgo, February 2d, A. D. 1848.

Wherefore, the said Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, by reason of the premises, and in pursuance of the act of Congress entitled "An act to ascertain and settle the private land claims in the State of California," approved March 3d, A. D. 1851, and the laws and statutes in such case made and provided, prays that the said claimant, or his attorney, may be served with a copy of this petition;

and that this honorable court will review the said decision of said commissioners, and reverse the same, and decide on the validity of the same, and decree the alleged title to be invalid, with costs and general relief.

P. ORD,
Attorney of the United States for the southern district of California.

Filed Dec. 8th, 1856. C. SIMS, *Clerk.*

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75 *Answer of claimant.*

U. S. dist. court, southern district of California.

MANUEL LARIOS *ads.* THE UNITED STATES. } Docket No. 325.—Transcript No. 297.

And the above-named claimant, for answer to the petition of the U. S. district attorney, on the part of the United States, says that his title to the land claimed in this case is valid, and he prays that the decision of the U. S. board of land commissioners, confirming his title and claim thereto, may be affirmed, and that his said title be decreed by this honorable court to be valid.

HORACE HAWES,
Attorney for Claimant.

Filed this 12th December, 1856.

C. SIMS, *Cl'k,*
p. J. H. COLEMAN, *Dep'ty.*

76

77 *Affidavit of Man'l Larios.*

U. S. dist. court for the southern district of California.

MANUEL LARIOS *ads.* THE UNITED STATES. } Claim confirmed by U. S. land commissioners for land near San Juan Bautista.

STATE OF CALIFORNIA,
Monterey County, ss:

Manuel Larios, being duly sworn, says that the land claimed in this case was granted to him by José Castro, prefect of the first district, by an original document, dated May first, 1839, by virtue and in obedience to an express order of Governor Alvarado, as recited in said original document; but although deponent has made the most diligent inquiry for said order of the governor, he has not been able to find it; nor is it at present, nor has it at any time, been under his control; nor has deponent any knowledge where it can be found, but

deponent verily believes that it has been lost or destroyed, or else stolen by parties hostile to his interests.

MANUEL LARIOS.

Sworn to and subscribed before me this — day of November, 1856.

W. S. JOHNSON,
[SEAL.] *Notary Public, Monterey Co.*

Filed this 19th December, A. D. 1856.

C. SIMS, *Cl'k*,
78 p. J. H. COLEMAN, *Dept'y.*

79 *Index to brief No.* 9, 11.

U. S. dist. court.

MANUEL LARIOS *ads.* THE UNITED STATES. } Docket No. 325.—Index to record.—Transcript No. 297.

I. Grant of May 4, 1839, to Larios, p. 23.

II. War made by governor's order: So says the grant itself, p. 23; dep. of Covarrubias, p. 16; José Castro, p. 10; Aguilar, p. 19; Manuel Castro, p. —; (see d'r'ho;) administrativo, p. 199, 38–9.

III. Larios title subsequently recognized by government, &c.: Stip. of law agent, and papers ref'd to, p. 34; depo. of Claudio Vasquez, p. 12; Ramon Auzar, p. 13; Man'l Castro, p. 22.

IV. Has been occupied and cultivated by Larios, whose family lived on it from 1834 to the present day: Depo. of José Castro, p. 10; Ramon Auzar, p. 13; Claudio Vasquez, p. 12; Aguilar, p. 18; M. Castro, p. 22.

V. Description and boundaries: The orig. grant, p. 23; depo. of Ramon Auzar, p. 14; Claudio Vasquez, p. 12.

VI. Due search for governor's order: Stipulation of law agent, p. 33; dep. of M. Castro, p. 21, 22; Aguilar, p. 19; José Castro, p. 10; af't of Larios, filed in this court; Hawes brief, No. 37, (*d'r'ho adr.*) p. 199, also 38–9, 143, 222, 245, 310, 324.

Filed this 19th December, A. D. 1856.

C. SIMS, *Cl'k*,
p. J. H. COLEMAN, *Dep'ty.*

80

81 *Brief of U. S. in case No.* 325.

It was understood in the argument that the counsel for the claimant in this case contended—

1. That the governor (Alvarado) had the power to grant the common lands of a pueblo.

2. That he could, and in this case did, delegate this power to the prefect Castro.

3. That the grant of the land (about ½ a league) by Castro, in virtue of said delegated power, was valid.

4. That the prefect Castro, in virtue of the law of the 20th March, (sec. 77,) could alone grant any or all the common lands of a pueblo, without the consent or license of the governor.

5. That the lands granted were common lands of the pueblo of San Juan Bautista.

In answer to the point that the gov. could grant the common lands of a pueblo, it is insisted that these lands were inalienable. The only law authorizing a governor to grant lands is that of the 18th of August, 1824. The law says expressly "that the objects of this law are those national lands which are neither private property nor belong to any corporation or pueblo, and can therefore be colonized."—(Sec. 2.)

It seems to me that this law is too plain for argument, and I will therefore pass to the 2d point—that the gov. could and did delegate this power to Castro.

It is enough to say that if the colonization law expressly excepted pueblo lands from grant, and the gov. having no power under that law to grant such lands, he could not, of course, delegate a power which he did not possess; that, then, the grant of Castro, made in virtue of such delegated power, cannot be sustained under the law of
82 1824.

The 4th point, that the prefect Castro, in virtue of his office, alone could grant the common lands, under the authority of the law of 20 March, 1837, remains to be considered.

In the first place, it is apparent by the title set up that the grant or act of Castro was made, not in virtue of his official authority, but it was done, it seems, upon the authority of the gov'r, in the capacity of agent. If this is true, then act was invalid for the reasons before stated. If, however, the grant was made as prefect, and under the powers conferred upon him by the said law of 20 March, 1837, (sec. 77,) it is insisted that the construction of that law asc ontended for by the counsel for the claimant is not correct. Mr. Hartnell has translated that sec. as follows:

"They (the prefects) will, by their own authority, and agreeably to the law, regulate the distribution of common lands in the towns of the district, provided there be no lawsuit pending in the tribunals respecting them; the parties interested having the right to appeal to the governor, who, in concert with the departmental legislature, will decide definitively what may be most convenient." And he adds in a note that "this distribution has reference only to temporary use and occupation."

The opinion here expressed by Mr. Hartnell is deserving of great weight. He had resided in California for more than 25 years; he was the best, if not the only, well-educated man living at Monterey, the seat of gov't, and as familiar with the laws, usages, and customs of the country as any man in it. He gives this opinion in 1849,
83 at a time when, and in a manner which makes him an impartial commentator; and such was his high character for truth and intelligence that his opinion is surely entitled to as much weight as that of the counsel for claimant, who placed no value upon the comment of Mr. Hartnell.

The only power conferred upon the prefect was to regulate the distribution of common lands, agreeably to the laws. The court will perceive that in regulating the distribution of these common lands of a pueblo, the prefect was to be governed by the laws, meaning the laws previously established and then in force, concerning the common lands of pueblos.

The laws of Spain absolutely prohibited the alienation of the common lands of pueblos.

"Our will and pleasure is to preserve to our cities, towns, and villages their rights, revenues, and right of enjoyment of their commons, pasture-grounds, or other kind of real estate they may have."—(Nov. Rec,. l. 2, t. 5, lib. 7.)

"The towns of Spain and the Indies could not at any period of time, grant or alienate any such property (as above described) without precedent license from the sovereign authority; such license not being presumed by any lapse of time."—(Elizondo *Pro. For. Unó,* v. 5, p. 233; 1 Feb. Mex, 305.)

"That all the (egidos) common lands, (montes,) woods, (terminos,) boundaries of the councils of our cities, towns, and villages of our kingdom and seignories, which are taken and occupied by any persons whatsoever, on their own authority, or by virtue of any letters of ours, be at once restored and returned to the said councils, whose they were and are. But we declare that the said councils cannot cultivate, sell, nor alienate them, but they remain for the common advantage
84 of the said cities, towns, and villages, where they are situated. And if any persons have worked or occupied anything of the same, let it be immediately disoccupied; and we command the same with respect to the common or pasture lands, (egidos,) which the pueblos have and possess—that they be not cultivated for the production of grain; and if any one shall have authority so to do, let him send it to us, so that, in view thereof, we may dispose accordingly as our pleasure may be."—(L. 1, tit. 7, lib. 7, Rec., or l. 2, tit. 21, lib. 7, N. Rec.)

"The property (bienes) of the community of each pueblo is designated by Don Alonzo Elu Wise, and was restricted to the fountains, (plazas,) aluvions, (arenales,) in the banks or the margins of the rivers, common lands, (egidos,) race-courses, wood lands, (montes,) pasture lands, (dehesas,) fields, vineyards, and all other similar places which may be used by every resident, poor or rich, but not by those of another town, (poblacion,) contrary to the will of the inhabitants, (vecinos.) Upon these principles the law established by the Catholic sovereign in Cordova, on the 3d of Nov., 1490, prescribing that any person whomsoever to whom the King may have made or shall make grants of any location in the country for gathering fruit or crops, and keeping small stock, the hereditaments and lands within the boundaries of the kingdom of Grenada, cannot, without royal and special license, fence up and keep to himself the grass and other products which the land bears spontaneously, the same remaining open and free, so that all the inhabitants (veciños) may consume it with their cattle, the same not being at the time planted in crops, under the penalty of

losing what he has, &c."—(5 Prac, Nov. For., 226, l. 9, tit. 20, partida 3; 10 Peters; 723, 2 Land Laws, ppp. 83.)

"The presumption of law was in favor of the inhabitants of a pueblo, as regards their right and title to the use and enjoyment of the common lands. The burden of proof was upon the party who denied the right or title of the community. Every individual of the pueblo had the right of action against all trespassers upon the pasture and common lands."—(5 Prac. Un. For., 226.)

"Lawyers, regidores, &c., to show no favor to gentlemen and persons in power who encroach upon town lands; suits to be presented against such trespassers," &c.—(L. 7, tit. 21, l. 4, vol. 3, p. 478, N. R.; 2 Land Laws, App., p. 93.)

"Restitution of town lands by officers of towns, summarily and without suit. To lose offices and right to hold office, if not restored, or if taken thereafter."—(L. 7, tit. 21, Rec.; 2 Land Laws, App., p. 94, 95, 96, 97, and 98.)

"The granting of land belonging to cities, towns, and villages, prejudicial to the crown, and injurious to the public good; hereafter none such can be made by the crown, or by any of such cities, towns, or villages."—(L. 7, lib. 21, law. 9, R. 2; Land Laws, App., 98.)

"The gov. and corregidores to make restitution of town lands," &c.—(Vol. 2, Land Laws, 99, 100.)

"The common lands not to be alienated nor ploughed, nor to be leased."—(Vol. 2, Land Laws, 112, sec. 76.)

"No one ought to erect a house or other building or works in the squares, nor on the commons, (egidos,) nor in the roads which belong to the commons of cities, towns, or other villages; for, as these things are left for the advantage or convenience and the common use of all,
no one ought to take possession of them, or do, or erect any
86 work there for his own particular benefit; and if any one contravenes this law, that which he does there must be pulled down and destroyed. And if the corporation of the place where the works are constructed choose to retain them for their own use, and not pull them down, they may do so; and they may make use of the revenue they derive therefrom in the same manner as any other revenues they possess. And we moreover say, that no man who has erected works in any of the above-mentioned places can or shall acquire a right thereto by prescription."—(L. 23, tit. 32, part 3; 10 Peters, 724.)

"But in regard to the lands of communities and those granted to the towns for pasturing and commons, no change shall be made. The towns shall still be maintained in possession, and those that may have been seized shall be restored to them."—(Royal regulation of October 15, 1754, sec. 2; 2 Land Laws, App., 50.)

Many other laws might be cited to the same effect.

There is a "royal ordinance," found in 2 Land Laws, App., 54, 55, and 56, which bears no date, but from its containing reference to the pueblos of Los Angeles, (established in 1781,) this ordinance must be of a date later than 1781. By the ordinance it appears that the intendants were invested with the exclusive jurisdiction of matters relating to the sale, composition, and grant of the royal lands, as well

as of the seignory, subject to the confirmation of the council. But this power to dispose of the royal lands expressly excepts common lands. Over these the intendant had no power, and any grant that he might have made would have been void, *ab inito.*

87 In 1791 Pedro de Nava, the intendant of the northern district of Mexico, made and published an order, or decree, declaring that, notwithstanding the provisions made in the 81st art. of the ordinances of the intendant s, the captain of the presidios might grant and distribute house-lots to the soldiers and citizens who might solicit them for residences.

This decree of Pedro de Nava was, no doubt, made, in pursuance of Bucarelio's decree, dated Mexico, 1773, (Rock., 144, 145,) to avoid the trouble, expense, and delay incident to getting grants of house-lots from the intendant. No one but the intendant or the crown, previous to the date of these decrees, (of August 17, 1773, and March 22, 1791,) could grant a lot of land in Mexico, and this power, delegated to the captains of the presidios, never was changed. It continued down to the time, I believe, of the regulations of Gov. Figueroa, in 1834, if not till the conquest of Cal'a, in 1846. It is true that all the early titles to lots of land in Cal'a were granted by the presidio capt's. The ayuntamientos, with the alcaldes, from motives of convenience, perhaps, after the presidios had been abandoned in San Francisco, Monterey, Santa Barbara, and San Diego, continued to dispose of the town-lots to actual settlers, for a trifling consideration. This decree also restricted the limits within which the captains of the presidios might grant lots. Measuring from the centre of the presidio square two leagues in every direction, (that is, upon each side,) were the limits not to be passed by the capt's in their grants.—(Senate Doc. No. 17, p. 139 ; Rockwell, 451.)

88 In 1779 Felipe de Neve, in his regulations for the government of the province of Cal'a, dated at Monterey, (approved by the King Oct., 1781,) authorized the granting of solares and suertes de tierras to the vecinos of the pueblos —(Sen Doc. 17, p. 134, 135, 136, 137, and 138.)

The Spanish constitution of 1812, and the decrees of the cortes in pursuance thereof, did not, that I know of, make any change of the laws vesting the granting power in the intendants. The decree of the cortes, of the 23d of May, 1812, changed the law with regard to the constitutional ayuntamiento. Its principal and most important change was the abolition of the offices for life, and made them elective. On the 23d of June, 1813, enumerates more in detail the duties and powers of the ayuntamiento, of the alcaldes, regidores, and procurador sindicos. Their duties are of a strictly municipal character, such as the framing of municipal ordinances and the administration of the *propios o arbitrios.* The sacredness of the common lands (egidos) remained under the old laws.

Upon the establishment of cities, towns, villages, or pueblos, the law required (so far as California is concerned) that four square leagues should be designated and set apart for a pueblo ; that within those limits there should be designated the *propios,* (lands for the benefit of the corporation,) the *dehesas de labor,* (suertes for cultiva-

tion,) and the *egidos*, (common lands.) Within that part designated the town, (propios,) lots of 100 varas, for building purposes, could be disposed of.—(Sec. 15, Regulations, Nov. 21, 1828.) But the *egidos* remained open for the common use and benefit of all the vecinos, (inhabitants of the town.) Within these limits of 4 sq'r leagues, (the terminos y territorio,) the municipal officers of the town or pueblo had jurisdiction. In a case now pending on appeal in this
89 court, (No. 354,) a witness, José del Carmen Lugo, testifies that in the year 1839, being then alcalde at Los Angeles, he made an order regulating the time and conditions of taking salt from the *salinas* on the sea-beach, above San Pedro, by the *vecinos* of Los Angeles.

This statement of an intelligent person shows the nature of the jurisdiction over a thing belonging probably to the town. But I know of no instance where any alcalde, regidor, sindico, or town council, granted the common lands, until after the conquest of Cal'a, in 1846. In San José, as early as '48 or '49, the town council, with no accurate knowledge of their powers, made grants or sales of all the common lands, in tracts of 500 acres. In Monterey, in 1847 or '48, the alcalde, Colton, as well informed as the *pueblo fathers* of San José, made grants or sales of lots of the extent of 50 acres, to all applicants who paid his price; and when questioned as to his authority by the then military governor, Col. Mason, answered: "Your inquire for the right of an alcalde to sell the site of a Mexican fort or battery. No Mexican law or decree, as I can find, designates any particular spot as sites of forts or batteries. Each military chief put up a post where he chose, or demolished those put up by his predecessor. He asked no leave to build, and none to abandon. When guns were mentioned, no alcalde ventured with his right to sell, but eagerly extended that right over an abandoned position. The only rule which appears to have governed the military authorities in these matters, seems to have beenthat of Rob Roy:

"The simple plan—

> "And they shall take who have the power,
> And they shall keep who can."

90 And it is said that one of the prefects of Cal'a, about 1849, made grants of lots in San Francisco, claiming to have legal authority to do so. It is said that the learned counsel in the cause at bar had the good fortune to be prefect for the northern district of Cal'a in 1849, and as such made grants of land in San Francisco.

The regulations of Nov., 1828, sec. 15, seems to contemplate that the house-lots shall be granted by the gov'n'r. Not being able to find any law vesting the power to grant common lands in any law, unless it be on the rule quoted by Alcalde Colton, but, on the contrary, all the laws, even that of the 18th of August, 1824, expressly excepting and forbidding the alienation of common lands of a pueblo, it may, I think, safely be assumed that there was no such law, unless the law of the 20th March, 1837, confers that power on prefects.

Hereafter I purpose to show that that law, properly considered in reference to the existing laws, conferred no such powers, but that it

merely gave jurisdiction to the prefect to mark out the common lands of the pueblo, then recently established in California, by the secularization of the numerous missions.

The regulations of Don Felipe de Neve, (Senate Doc. 17, 134,) sec. 5, provides the quantity of land which could be granted to be two suertes (of 200 varas square) of irrigable land, and two of dry land. The whole extent of land, then, which could be granted to the *pobladores,* under this law, was 800 varas square, to be granted in the *name of the King by the government or gov'r.* This regulation of De Neve's seems to have been the guide of the gov'rs in very many instances, as late as 1844, at least in one respect. The 7 sec., which for-
91 bids the encumbrancing or alienation of the parcels of land so granted, upon the condition of forfeiture, has been copied *verbatim* in a very large number of the titles made by the subsequent governors of Cal'a These lands were given, as also personal property, upon the condition of rendering military services to the King when needed. And I have but little doubt that no titles in full ownership were ever lawfully conceeded to any person resident of Cal'a previous to the regulations of 1828, of an extent of land exceeding the quantity of 800 varas square, except by the intendant, and I have seen no such titles as yet. Indeed it was not the general policy of Spain to grant large tracts of land to individuals. On the contrary, it would seem to have been their desire to keep the inhabitants together in cities, towns, and villages, and to discourage the scattering of settlers in the country. This seems to have been the uniform policy of Spain, with a few exceptions. And it continued till, by the revolution of Mexico, a new policy was established—that of granting in larger tracts their public lands to citizens or strangers who would introduce colonists.

The colonization law of 1824, made at a time when liberality and good feeling existing between Mexico and the United States, was intended by the framers to strengthen the new republic by the introduction of strangers from a country whose constitution and laws they had just adopted as their model. In a little time afterwards, and before the law was fairly in operation, a change of feeling occurred on the part of the Mexican authorities, and, as a consequence, but few empresarios grants were made, and but little, if any, of the promised good resulted to Mexico from this law.

92 By the decree of the Spanish cortes of the 13th September, 1813, the missionary establishment of Buenos Ayres were secularized, and the vacant lands adjacent directed to be distributed in accordance with the previous decree of the 4 January, 1813.

Endeavoring to carry out the spirit of the decree, Gov. Echandia, about 1829, prepared a project for secularizing the missions of Cal'a, and converting them into towns or pueblos. And a decree was issued on or about the 6th of January, 1830, designating the particular manner of parcelling out the lands and property of the missions, and of regulating the government of the proposed pueblos, But this decree never went into operation. A new governor arriving from Mexico shortly afterwards, he forbid all attempts to carry it into execution. (Halleck's Reports, Senate Doc. No. 17, 125.)

On the 17th of August, 1833, the congress of Mexico passed a law for the securalization of the missions in Upper California, and Lower. (Senate Doc. 17, 148.) In pursuance of this law Gov. Figueroa adopted and promulgated, on the 9th of August, 1834, regulations converting the missions of Cal'a into pueblos. By art. 5 of these regulations, he declared that there would be given to "every individual, head of a family, and to all those above 21 years of age not having a family, a lot of land not exceeding 400 varas square, nor less than 100, out of the common lands of the missions, and that in community a sufficient quantity of land should be allotted them for watering (and pasturing ?) their cattle, and that *common lands* should be assigned each pueblo, and, when convenient, municipal lands also."

It makes provision, also, for the distribution of the personal
93 property of the missions amongst the residents, and provides for the establishment of the political government of the same, &c.; and also that the lands so distributed to the residents (Indians) should not be sold, and that upon the death of the grantees without heirs, the lands so distributed should revert to the nation.—(Sen. Doc. No. 17, 150.) On 3d of November, 1834, the California deputation passed an act providing for the execution of the 2d sec. of the law of the 17th August, 1833. It relates to the salaries to be paid the priests of the missions, who, by the new law, lost all control over the temporal affairs of the missions.—(Sen Doc. 17, 153.)

On the 7th of November, 1835, the congress of Mexico, by law, suspended the operation of the act of August 17, 1833, until the curates, mentioned in art. 2 of said law, should take possession.

After the passage of this law of 1835, and about the time of its promulgation in Cal'a, the peace and quiet which had existed during the term of office and life of the excellent Governor Figueroa, was interrupted by the appearance of José Castro and Juan B. Alvarado, as political leaders and rulers. In virtue of his office as señor member of the dep't junta, upon the death of Figueroa, in the latter part of 1830, José Castro came into power as ex officio gov. In a few months after, however, Nicolas Gutierrez assumed the duties of gov., thus displacing Castro. Gutierrez in a short time was succeeded by Marianao Chico, who came from Mexico with the appointment of gov. from Santa Ana. He soon became disgusted with the treatment he received at Monterey and was compelled to leave. Thereupon Alva-

rado took his place, proclaimed Cal'a independent, made Castro
94 his commander-in-chief, and sent him down the country to drive off Carlos Antonio Carrillo, who had been appointed by the president Chico's successor. Carrillos made some effort at resistance at San Buenaventura, but being unsuccessful, made his escape in a boat, and never after attempted to exercise his authority as gov. From this time till about the year 1840 Alvarado was the gov. *de facto*. About this year he was recognized as constitutional governor by the supreme government, for the reason, I suppose, that they could not oust him.

In 1842, however, Man'l Micheltorena came to Cal'a as gov., with a commission from Santa Ana, and 2 or 300 *hundred* troops to enforce his authority. Upon his arrival Alvarado surrendered his power, probably because he had not the force ready to maintain it.

It was during this administration of Alvarado that Castro, acting as prefect, made the grant of land in this cause, in virtue, as pretended, of the said 77 sec. of the act of the congress of Mexico of 20 March, 1837. A careful reading of the whole of this act, bearing in mind the existing laws in relation to common lands of the pueblos established and to be established, has satisfied me that the true intent and meaning of that part of the law is to impose upon the prefects the duty of setting apart, fixing the boundaries, or parcelling out the common lands of the pueblos, in all cases when it had not been done, so that the inhabitants thereof might use and enjoy that which all the laws upon the subject so solemnly guarded and protected—the free use and enjoyment by the inhabitants of pueblos of the *common lands*.

Whatever may have been the opinion of Alvarado in 1839,
95 about the meaning of this sec. 77, it would seem, from the evidence contained in the expediente introduced by the claimant in evidence in this court, in case No. 933, (confirmed Jan'y 23d, '57,) that in March, 1842, he declined granting lands to the petitioner, on the ground that it could not be done until it was ascertained whether the lands asked for was pueblo lands or not. The prefect at that time, S. Arguello, it would seem, made and established the boundaries of the common lands of Los Angeles in that direction, and reported that the land asked for was within the boundaries of the common lands. The gov., Alvarado, did not refer the matter to Arguello, and authorize him to grant, but he grants the land asked for in the usual form and manner, adding the condition in the grant that the grantee should pay the tax which the pueblo might impose, being common lands As before argued, the gov'r could not grant any but the public lands. What the gov'r could not do, certainly his creature, the prefect, could not do. It seems to me the condition annexed to the grant in this case shows of itself that the full ownership of the land was in the pueblo.

The condition in a deed to pay an annual rent to the pueblo, such as it might impose, strikes me as recognition of the fact that the land was not public land such as he could grant under the colonization law of 1824 and the regulations of 1828. In the Castro grant, however, there is no such condition. It is a clear grant of full ownership of about half a league of pueblo land to Larios. There is evidence in

the transcript that the lands were pueblo lands, or common
96 lands. Castro, probably, at the time of the date of the paper called a grant, was not even attentive to the rules of law, and was content with the exercise of the granting power, little thinking that the act would ever undergo the scrutiny of an American court of law. He was then in a position, like the Monterey alcalde, to quote the words of Rob Roy as the warrant of his authority.

The territorial deputation of Cal'a passed an act on the 6th of August, 1834, providing that "the ayuntamientos will make application through the ordinary channels requesting lands to be assigned to each pueblo for *egidos*, (common lands,) and *propios*, (municipal lands.)"

Art. 2 provides that the lands assigned to each pueblo for propios shall be subdivided into middling sized and small portions, and that they may be rented out or given at public auction, subject to an em-

phitutic tax or rent. The present possessors of lands belonging to the proprios will pay an annual tax, to be imposed by the ayuntamiento, the opinion of three intelligent men of honor being first taken.

Art. 3 provides that for the grant of a house lot for building on the parties interested shall pay six dollars and two reals for each lot of 100 varas square, and in the same manner for a larger or smaller quantity, at the rate of two reals for each vara front."—(Halleck's Report, 123.)

Here it will be seen that the law plainly limits the right of alienation of public lands to the *propios*, and this distinction is in harmony with all the laws I have met with, and upon the well-established maxim in the construction of statutes, as well as of contracts,—*expressio unino est exclusio alterius.*—(Broom's Legal Maxims,
97 505.) The common lands were excepted.

The decree of the Spanish cortes of the 4th Jan'y, 1813, provided for the distribution and reduction to private property of all the lands previously used and occupied by the towns, and prescribes the manner by which it should be done. This law, however, was not carried into effect in Spain nor Mexico, and this law, whether carried into effect or not, cannot be invoked in the case at bar, for the reason that the 2d section of the colonization law of 1824 and the regulations of 1828 may be regarded as repealing the same. This law of 1824, as before stated, expressly reserves from grant the lands belonging to any corporation or pueblo.

The 77th sec. of the law of 1837 also provides that if there should be any lawsuits, with regard to the common lands, the claimants might refer the matter to the gov., who, in conjunction with the departmental juntas, should settle the same.

Now, this latter clause, it seems to me, refers to private claims or grants of the lands, or some part thereof, which might be set up by individuals at or about the time the prefect should regulate the division (repartamiento) of the common lands from the public domain or private lands within the territorial jurisdiction of the prefect; and I presume that if, in case the land so solicited by the prefect for public lands should prove to be private property, after the examination of the matter by the gov. and dep. junta, that it might have been taken for the public use of the pueblo, upon payment of its value, as provided by the Mexican constitution.

This construction of the 77 art. seems to be reasonable and
98 consistent with the spirit of the laws and general policy of the Spanish and Mexican government in regard to pueblos. If I am wrong, however, in my view of the 77 section, and the court should be of the opinion that the prefect, under the said sec. of said law of 1837, had the power to grant the pueblo common lands, then it is insisted that he must be restricted to the maximum quantity of land allowed to be given to any one of the *vecinos* of a pueblo, by the 5 art. of the regulations of Gov. Figueroa of 1834, to wit, 400 varas square. These regulations were made "agreeably to the spirit of the law of the 17th August, 1833, and to the *instructions*

which he has received from the supreme government."—(Art. 1 of reg., Sen. Doc. No. 17, 149.)

In 1842 Gov. Alvarado directed Mariano Bonillo, then acting alcalde and adm. of the mission of San Luis Obispo, to distribute to the inhabitants (Indios) the lands of and adjacent to this mission, and limiting the quantity to 200 varas square. He did not instruct the prefect, nor does the prefect of the district appear to have had any agency whatever in the granting of these lands, and this mission, like all the others, had been converted into pueblos by Gov. Figueroa, in 1834. Now, if the construction of the 77 art. contended for, which it is said makes it the duty of the prefect to make these grants of pueblo common lands, then it would seem in this case at least such was not the construction of the art. 77, in 1842, by Gov. Alvarado, whatever may have been his understanding of it, and that of Castro, in 1839. Bonillo's evidence, above referred to, may be found in the case of Juan Wilson, for the *Huerta de Romualdo*, No. 261, lately argued and submitted to the court. If the gov. then could
99 delegate any power he might have to give *suertes* of land of the mission pueblos, it was limited to the quantity of 400 varas square. It would seem to have been the practice, if not the law, for the local authorities of the pueblos, missions, to give away to settlers such small portions of land within the pueblo mission limits, after their secularization in 1834, and the certificate or title of such local authority has been regarded as valid. But even this title was by the law not a perfect title. The donee could not alienate it, and in the event of his death without heirs it reverted to the nation. Such was the tenure and such is the tenure of the Indians to the land of the U. States which they actually occupy. Their right to alienate has never been admitted, tho' the title to the actual use and enjoyment has been respected by Spain, England, the U. States, Mexico, and all civilized nations.

If the grant at bar is considered upon its merits, it is believed to be invalid. There is no quantity specified—nothing to indicate its extent and quantity, but the opinion or belief of one of the witnesses, who says he thinks it is of the extent of about ½ a league. It would be perfectly safe to estimate the quantity at not less than ½ a league; how much more is not known. The natural boundaries mentioned in the grant are not shown to surround or close all the lines of the tract claimed. It may be open on one side. In that event, where could a surveyor establish such a line? Again, one of the natural boundaries in the grant are the hills which are seen going to San Juan. What hills? How and where do they lie? What is their
100 extent? Are the hills to be included or not? This is too vague and uncertain a description to enable the surveyor to locate the land, without the assistance of any petition describing the land—without any map—without any specified quantity. These must be presumed to have existed, because they are required by the law of 1824. There is no evidence that they do not exist. They may be presumed to contain matter fatal to the claim, at least as regards the quantity of land claimed. Again, the claimant shows no judicial possession, which it should be presumed he has had. The failure to show this, or its non-existence or loss, is a suspicious circumstance against

him. This may show that the extent of land actually given was but at most 400 varas square, which would be a reason for his not producing it, as long as he had a hope that he could do better and get more land for himself by keeping it back.

At the time of the alleged grant Larios had a large rancho five or six leagues from San Juan, called Santa Ana, (confirmed to him by this court,) when the evidence in the transcript shows he lived with his family, numerous stock, and had a chapel which he had built, &c., &c. That he should want a pueblo building lot seems quite probable; that he received one very likely. But that he is entitled to a confirmation of the claim set up in this case, under Castro's grant, for at least ½ league of pueblo common land, upon the law or the merits, I do not believe.

Respectfully submitted.

P. ORD, *Dist. Att'y.*

Trans. 24, 57, pa.

101 *Art.* 77; *Law* 20 *March*, 1837, *which treats of prefects, &c.*

"Arreglàran gubernativamente y conforme à las el repartamiento de tierras communes en los pueblos del distrito siempre que sobre ellas no haya litigio pendiente en los tribunales, quedando à los interesados su derecho à salor para ocurrir al gobernador, quien sus ulterior recurso decidirà lo mas convenente, de acuerdo con la junta departamental."

Filed Jan'y 27th, 1857.

C. SIMS, *Cl'k.*

102

103 *Decree.*

District court of the United States for the southern district of California.

THE UNITED STATES, appellant,
vs.
MANUEL LARIOS, appellee.
} Docket No. 325.—Transcript No. 297.

This cause coming on to be heard on appeal from the decision of the commissioners to ascertain and settle private land claims in the State of California, under the act of Congress approved March 3d, 1851, upon the transcript of proceedings decision of said commissioners, and the papers and evidence upon which said decision was founded, which have been duly returned and filed in this court as required by law, and on further evidence taken under the order of this court, and counsel for the respective parties having been heard, on due consideration had, it is by the said district court now here ordered, adjudged, and decreed that the decision and decree of the said commissioners be, and the same hereby is, affirmed, and that the title of the said Manuel Larios, appellee to the land claimed in this case, is good and valid, and the land so claimed is hereby confirmed to him.

The land hereby confirmed to said claimant is situated in the county of Monterey, near the town of San Juan Bautista, and is the same

which was granted to him by José Castro, prefect of the first district, by order of the governor, by a document bearing date May 4th, 1839, a copy whereof is contained in the transcript in this case, and to which reference is herein made. It is bounded by the road which
104 at the date of said grant was known as the "Camino Real de en Medid," as far as the summit of the mountains which overlook the town; also by lands which at said date were known as lands of Don Juan Auzar, those of Señor Gomez, and those of José de los Santos Abila. For a further and more particular description reference is made to the aforesaid grant and the depositions of Ramon Auzar and Claudio Vasquez, contained in the transcript. Thus done and ordered in open court this twenty-third day of December, 1858.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the S. Dist. of Cal'a.

Filed 23 December, 1858.

C. SIMS, *Cl'k*,
p. W. W. STETSON, *Dep'ty.*

105 *Order of appeal.*

United States district court, southern district of California.—Intermediate term, A. D. 1862.

MANUEL LARIOS, appe'ee, *vs.* THE UNITED STATES, app'l'ts. } No. 325 D. C.—No. 297 L. C.

MAY 1ST, A. D. 1862.

Now comes B. C. Whiting, U. S. dist. att'y, and moves the court that an appeal be allowed the U. S. in this case to the Supreme Court of the United States, from the order and decree heretofore rendered by this court.

Which motion being heard and understood, is granted.

106 United States district court, south'n dist. Cal'a.

CLERK'S OFFICE, *Monterey, Cal'a.*

I, John O. Wheeler, clerk of the U. S. dist. court for the southern district of California, do hereby certify the foregoing one hundred and five pages to contain a full, true, and correct transcript of the record of the proceedings, and of the decision of said court, of the documentary evidence and testimony of witnesses, upon which said decision was founded on file in my office in case No. 325, upon the docket of said court, wherein Manuel Larios is the claimant against the United States, for lands near the mission of San Juan Bautista.

In testimony whereof, I have hereunto set my hand and affixed
[L. S.] the seal of said court, at Monterey, this the 9th day of December, A. D. 1862.

JOHN O. WHEELER,
Clerk U. S. Dist. Court, S. Dist. Cal'a.

Filed January 9, 1863.